

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

JOHN LATHAM, JR.,	:	
Plaintiff,	:	
	:	
v.	:	No. 2:17-cv-445
	:	
NANCY A. BERRYHILL, ¹	:	
Acting Commissioner of Social Security,	:	
Defendant.	:	

ORDER

AND NOW, this 13th day of December, 2018, upon consideration² of Plaintiff's Complaint, ECF No. 3; Defendant's Answer, ECF No. 7; the Social Security Administrative Record, ECF No. 8; Plaintiff's Brief and Statement of Issues in Support of Request for Review, ECF No. 18; Defendant's Response to Request for Review of Plaintiff, ECF No. 19; Plaintiff's

¹ On January 23, 2017, Nancy A. Berryhill became the Acting Commissioner of the Social Security Administration. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill should be substituted as the defendant in this case.

² Defendant did not file objections to the R&R. When neither party objects to a magistrate judge's report and recommendation, the district court is not statutorily required to review the report, under de novo or any other standard. 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 152 (1985). Nevertheless, the United States Court of Appeals for the Third Circuit has held that it is better practice to afford some level of review to dispositive legal issues raised by the report. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987), *writ denied* 484 U.S. 837 (1987). "When no objections are filed, the district court need only review the record for plain error or manifest injustice." *Harper v. Sullivan*, No. 89-4272, 1991 U.S. Dist. LEXIS 2168, at *2 n.3 (E.D. Pa. Feb. 22, 1991). *See also Hill v. Barnacle*, No. 15-3815, 2016 U.S. App. LEXIS 12370, at *16-17 (3d Cir. 2016) (holding that even when objections are filed, district courts "are not required to make any separate findings or conclusions when reviewing a Magistrate Judge's recommendation de novo under 28 U.S.C. § 636(b)"); *Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (explaining that in the absence of a timely objection, the court should review the magistrate judge's report and recommendation for clear error). The district court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

Reply, ECF No. 20; and the Report and Recommendation (“R&R”) of United States Magistrate Judge Carol Sandra Moore Wells, ECF No. 22, **IT IS ORDERED THAT:**

1. The Report and Recommendation is **APPROVED** and **ADOPTED**.
2. Plaintiff’s Request for Review is **GRANTED**.
3. This case is **REMANDED** to the Commissioner under sentence four of 42 U.S.C. § 405(g). On remand, the Administrative Law Judge shall (1) modify her RFC assessment to include a limitation accurately reflecting Plaintiff’s ability, or lack thereof, to keep pace, or explain why no limitations is required; and (2) elicit testimony from Plaintiff as to why he did not comply with medication recommendations, or explain how the record reflects that there was no good reason for Plaintiff’s non-compliance.
4. Judgment is **ENTERED** in favor of Plaintiff and against the Commissioner of Social Security.
5. This case is **CLOSED**.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.
JOSEPH F. LEESON, JR.
United States District Judge